IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

TRC.No. 437 of 2002()

STA.153/1993 of THE SALES TAX APPELLATE TRIBUNAL, KOTTAYAM
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PETITIONER:

PADMA JEWELLERY, COURT ROAD,
CHENGANNOOR, ALLEPPEY REPRESENTED BY
MANAGING PARTNER RAJENDRA KUMAR K.P.

BY ADV. SRI.P.N.MOHANAN

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY SECRETARY TAXES,
THIRUVANANTHAPURAM.

BY SPL.GOVERNMENT PLEADER(TAXES) SRI.V.V.ASOKAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

T.R.C.No.437 0f 2002

Dated, this the 12th day of June, 2007

ORDER

H.L.Dattu, C.J.

The assessee is a dealer in gold and silver jewellery. For the assessment year 1991-92 the assessee had filed annual returns and declared total and taxable turnover.

2. The inspecting wing of the department had inspected the business premises of the petitioner and had noticed difference in stock. When it was brought to the notice of the assessee, the assessee had compounded the offence departmentally by paying the penalty leviable under the Act.

3. The inspection report was available before the assessing authority. In view of that the assessing authority had rejected the books of accounts and the returns filed by the assessee and thereafter proceeded to complete the assessment by applying five times the average of running stock to arrive at the total and taxable turnover of the assessee. Accordingly they quantified the liability of the assessee under the provisions of the Kerala General Sales Tax Act. The orders of assessment so passed were subject matter of appeal before the first appellate authority at the instance of the assessee. The appellate authority has accepted the findings and conclusions reached by the assessing authority, but it has thought it fit to reduce the multiplier by taking it as four times the average of the running stock as the suppression for the purpose of computation of liability of the assessee under the Act.

4. The assessee was not satisfied with the modified order passed by the

appellate authority. They preferred another appeal before the Tribunal. The Tribunal in all respects accepted the findings and conclusions reached by the assessing authority as well as the first appellate authority, but reduced the multiplier by taking it as three times the average of the running stock. Aggrieved by those orders the assessee is before us in this revision filed under Section 41 of the Kerala Gelera Sales Tax Act.

5. The petitioner has raised the following questions of law for our consideration and decision:

> "1. Whether on the facts and circumstances of the case petitioner is entitled to be assessed considering the stock of old and new gold ornaments together as a single commodity.
>
> 2. Whether on the facts and circumstances of the case even though petitioner was compounded the offence which was done without prejudice to the right of the petitioner, the assessing authority is right to estimate 3 times of the running stock.

6. Section 41 of the Act provides for revision against orders passed by the Tribunal to the assessee as well as to the Department. This Court can entertain a revision only on two grounds. They are (i) if the Tribunal has failed to decide the question of law and (ii) if it erroneously decided the question of law.

7. Present is the case where an estimation is made by the authorities under the Act. It is not the case of the assessee that such estimation is either arbitrary or illegal. In the absence of such an assertion in the revision petition it cannot be held that the Tribunal has failed to decide the question of law or erroneously decided the question of law. In that view of the matter the revision petition filed by the assessee cannot be entertained by us. Accordingly the

revision petition requires to be rejected and it is rejected. Ordered accordingly.

C.M.P.No.6741 of 2002 stands dismissed.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns